

MINUTES
FOR THE MEETING OF THE
COMMISSION ON WATER RESOURCE MANAGEMENT

DATE: January 24, 2007
TIME: 9:00 am
PLACE: DLNR Board Room
Kalanimoku Bldg.

Chairperson Peter T. Young called the meeting of the Commission on Water Resource Management to order at 9:03 a.m.

The following were in attendance and/or excused:

MEMBERS: Mr. Peter Young, Dr. Chiyome Fukino, Ms. Stephanie Whalen, Mr. James Frazier, Mr. Neal Fujiwara, Dr. Lawrence Miike

STAFF: Roy Hardy, Ed Sakoda, Lenore Nakama, Dean Uyeno, Ryan Imata, Dean Nakano

EXCUSED: Meredith Ching

COUNSEL: Randy Ishikawa, Esq.
Julie China, Esq.

OTHERS: Yvonne Izu, Steve Bowles, Isaac Moriwake, Kapua Sproat, Dr. Jonathan Likeke Scheuer, Blaise Clay

All written testimonies submitted at the meeting are filed in the Commission office and are available for review by interested parties. The items were not taken in the order posted on the agenda.

A. APPROVAL OF MINUTES

1. December 13, 2006

MOTION: (Frazier/Whalen)
To approve the minutes.
UNANIMOUSLY APPROVED.

B. ANNOUNCEMENTS

Acting Deputy Director, Dean Nakano acknowledged Ryan Imata for 10 years of service with the Commission on Water Resource Management.

Dean Nakano also announced that this was his last meeting with the Commission and thanked the Commissioners, the Chairman and the AG's for all the support through the

years. He stated that he would be starting at the Board of Water Supply on February 1, 2007. He expressed his appreciation of working for the Commission and looks forward to continuing the relationship.

Chairman Young stated that Dean will be missed.

C. GROUND WATER REGULATION

1. Water Resources International, Inc., APPLICATION FOR AFTER-THE-FACT WELL CONSTRUCTION/PUMP INSTALLATION PERMITS, Hapuna 4 Well (Well No. 6047-05), Well Construction: 12-inch Casing Diameter, 760-ft Deep Well, Pump Installation: 450 gpm for Irrigation use, TMK 6-2-001:051, Hawaii

PRESENTATION OF SUBMITTAL: Ryan Imata

DISCUSSION:

Mr. Imata stated that after the submittal was prepared, Blaise Clay of Water Resources International Inc. indicated that no pump was installed; therefore, the submittal should be amended to delete the portion pertaining to after-the-fact pump installation.

Mr. Imata stated that on October 20, 2006 Blaise Clay and Howard Akagi from Water Resources International, Inc. and Tom Nance met with staff to inform the Commission that they had constructed a well without the appropriate permits from the Commission. Mr. Imata recommended that the Commission find Water Resources International, Inc. in violation of HAR § 13-168-12 (a) and impose a fine of \$200 as summarized in Exhibit 3 of the submittal (amended to reflect no pump installed) payable within 30 days.

Commissioner Whalen asked why a permit was not obtained despite Mr. Nance's involvement and his awareness of the permitting requirements. Though Mr. Nance was not available for comment, Mr. Clay stated that an application was prepared but was not signed and submitted. Ms. Whalen asked if new procedures have been implemented to ensure that this will not happen in the future.

Commissioner Frazier asked how often wells are constructed without permits. Mr. Imata stated that after-the-fact permits are rare and the finding of violation and fines typically deter repeat occurrences by the same driller.

Commissioner Frazier asked about any possible unknown drillers. Mr. Imata stated that there had been an incident 5 or 6 years ago but the driller left the state after being found in violation.

Roy Hardy stated that the drillers are self policing themselves and ask from time to time about other drillers and if they have permits.

AMENDED RECOMMENDATIONS:

That the Commission:

- A. Find Water Resources International in violation of HAR §13-168-12(a).
\$200
- B. Impose a fine of \$400 on the driller as summarized in Exhibit 3 payable within 30 days.
- C. That the Commission approve the issuance of a well construction ~~and pump installation~~ permits for the Hapuna 4 Well (Well No. 6047-05), subject to the standard conditions in Exhibit 4 & 5, and the following special conditions:
 - 1. The well should not be used for drinking water unless it is properly tested and treated.
 - 2. If potable water is used to supply both domestic and irrigation purposes in a single system, the permittee shall eliminate cross-connections and backflow connections by physically separating potable and non-potable systems by an air gap or an approved backflow preventer, and by clearly labeling all non-potable spigots with warning signs to prevent inadvertent consumption of non-potable water.
 - 3. That the permits will be issued after the fine described in Item B is paid by the applicant.
- D. Suspend any current, pending or future applications by the driller until the fines are paid and the driller completes the permit process for this well.

MOTION: (Frazier/Whalen)

To approve the submittal as amended.

UNANIMOUSLY APPROVED AS AMENDED

E. STREAM PROTECTION AND MANAGEMENT

- 1. Request for Additional Time to Consult with the County of Maui, Hui o Na Wai Eha and Maui Tomorrow Foundation, Inc., Petition for Surface Water Management Area Action, Waihee, Waiehu, Iao, and Waikapu Surface-Water Hydrologic Units, Wailuku, Maui**

PRESENTATION OF SUBMITTAL: Ed Sakoda

DISCUSSION:

Mr. Sakoda stated that the process for taking action on a petition to designate an area was listed at the bottom of page 1 on staff submittal E1.

Mr. Sakoda stated that a petition is filed with the Commission or by recommendation of the Chairperson. The next step is consultation with the Mayor, County Council, and County of Maui Department of Water Supply (MDWS). After comments are received the Chairperson makes a recommendation to the Commission to accept or reject the petition within 60 days of the receipt of the petition.

The recommendation is either to continue the process or end it. If the petition is accepted, the designation process continues. The designation process includes publication of a notice of a public hearing, holding a public hearing, staff investigations, and finding of facts. There is a second consultation with the Mayor, County Council and MDWS, then a recommendation to the Commission for final action.

Mr. Sakoda stated that the Commission was in the early stages of the process. Mr. Sakoda further listed those that have sent in comments: Mayor Alan Arakawa; George Tengan, Director of the MDWS; Riki Hokama, Council Chair; Paul Mancini and various Council members.

On January 8, 2007, letters were sent to the new Mayor and Director of the MDWS, informing them of comments made by the former Mayor and Director. Staff wanted to give the new administrators an opportunity to respond.

Chairman Young asked if we could comment at the February 2007 meeting.

Acting Deputy Director, Dean Nakano stated that he had spoken to the Deputy Managing Director at the MDWS and it was indicated that from the Mayor's and the Director's perspective they have no change in prior testimony.

Chairman Young stated that there was enough information where we wouldn't have to wait until April 2007.

Mr. Sakoda stated that the next Council meeting was in mid-February and a Committee meeting is scheduled in early February (Water Resources Committee). The Committee would present their findings to the Council in mid-February and would not be able to meet prior to our February Commission Meeting.

Chairman Young suggested that we not delay and just move forward.

Kapua Sproat and Isaac Moriwake, co-counsels for Earthjustice representing Hui o Na Wai Eha and Maui Tomorrow Foundation, Inc. stated that both the Mayor and the MDWS supported the position that was taken by the County back in December 2006. Ms. Sproat also stated that the Water Resource Committee will be taking up a resolution on Monday, January 29, 2007 to see if they can expedite the process, hear the resolution and get a final vote on it by Friday, February 2, 2007.

Ms. Sproat also stated that they wanted the Council to move forward and the Chairman to make a recommendation as to whether or not the process will move forward. A public

hearing would then be held, and this process will take another 60 days because of administrative rules and codes. A notice has to be published once a week for 3 consecutive weeks not more than 30 days before the date of the hearing. Ms. Sproat strongly urged the Commission to move on this as quickly as possible.

Commissioner Miike asked if we reject this matter and the initial 60-day deadline is approaching can we just accept it? Otherwise we would be in violation.

Deputy AG Julie China stated that the rule states that it is 60 days or additional time as is reasonably necessary to determine if there is factual data to warrant designation.

Ms. Sproat also supported that rule and reiterated that it is a recommendation by the Chair and not the Commission. The Chair could take an action today or within the 60 days recommending that the action move forward and take it up at the February meeting.

Commissioner Miike asked if the Chair could make a recommendation right after the Maui Council meeting without waiting for the Commission meeting.

Ms. Sproat stated that the Chair could make a recommendation at that moment or he could elect to wait for more information.

Chairman Young suggested that the notice would be to prepare for publication contingent upon the Commission final action.

Dr. Jonathan Likeke Scheuer from the Office of Hawaiian Affairs spoke in support of this petition and recommends that we go forward.

Chairman Young stated that he would prefer to have a February meeting to address this issue and that a recommendation can be done by then as a board submittal.

Dr. Scheuer suggested that staffs' recommendation be rejected and no action taken.

Commissioner Miike stated that a recommendation could be made at any time before the February meeting.

Yvonne Izu, attorney for Morihara Lau & Fong LLP, representing Hawaiian Commercial & Sugar Company stated that there is some confusion and what Dr. Scheuer states is the correct solution because the 60 days is the time for the Chairperson to make a recommendation. If the Chairperson makes a recommendation by February 4, 2007, which is when the Council's comments would be in, the Commission can wait until their February 21 meeting to decide whether or not they want to accept or reject it.

Commissioner Whalen moved that we extend the Chairperson's recommendation deadline to the next Commission February meeting to accommodate and gather comments from the various County agencies as required by law.

AMENDED RECOMMENDATIONS:

That the Commission:

- A. Extend the 60 day Chairperson recommendation deadline (step 4), to the February 2007 meeting, to accommodate and gather comments from the various county agencies as required by law.

MOTION: (Whalen/Fujiwara)

To approve the submittal as amended.

UNANIMOUSLY APPROVED AS AMENDED

H. NEXT COMMISSION MEETINGS (TENTATIVE)

- 1. March 21, 2007
- 2. April 18, 2007

Respectfully submitted,

PAULYNE K. ANAKALEA
Secretary

APPROVED AS SUBMITTED:

W. ROY HARDY
Hydrologic Program Manager